Tan Eng Han Construction Sdn Bhd v Sistem Duta Sdn Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24C-170–10 OF 2017
LEE SWEE SENG J
29 MARCH 2018

Building and Construction Law — Construction contract — Adjudication — Claimant sought to enforce adjudication decision — Whether both of the adjudicators rendered decisions in accordance with requirements — Whether both of adjudication decisions were valid and binding — Whether both of adjudication decisions should be given effect and enforcement — Construction Industry Payment and Adjudication Act 2012 ss 12, 13 & 28

The plaintiff had applied by way of an originating summons for enforcement of two adjudication decisions dated 15 June 2017 and 4 August 2017 as if they were judgments or orders of the High Court. The plaintiff was the claimant in the two adjudications under the Construction Industry Payment and Adjudication Act 2012 ('the CIPAA'). The plaintiff and the defendant had entered into a construction contract on 15 December 2009 whereby the plaintiff was engaged by the defendant as its subcontractor for the project known as 'Construction, Completion, Testing And Commissioning 3 of Building Works for (i) 4 Block of 60 Units Double Storey Shop; (ii) 1 Block 8 Units of Double Storey Shop; (iii) 3 Block 37 Units of 2 1/2, Storey Shop On Lot 234 & 237, Mukim Mentakab, Daerah Temerloh, Pahang Darul Makmur' ('the contract'). The original contract sum was RM17,828,968 and the defendant had failed to make the outstanding sum to the plaintiff. As there was no proper payment term in the contract, the plaintiff relied on s 36 of the CIPAA as the default payment term. The plaintiff initiated adjudication proceedings under the CIPAA and the defendant had failed to make payments as directed under the two adjudication decisions by their due dates.

Held, allowing the enforcement of the two adjudication decisions with costs of RM1,000:

(1) The disputes and matters decided by the two adjudicators fell within the core jurisdiction of the adjudicators as provided under the CIPAA. The time period under s 12(2) of the CIPAA had also been complied with (see paras 48 & 51).

(2) The adjudication decisions of both the adjudicators were in writing and they both contained reasons for the decisions arrived at as required under s 12(4) of the CIPAA. Section 12(5) of the CIPAA had also been

complied with as the adjudicated amount had been clearly stated and the time and manner the adjudicated amount was payable (see paras 52–53). A

(3) This was not a case where the court should enforce less than the amount adjudicated in the adjudication decisions under s 28(2) of the CIPAA. That discretion was exercised only when there was clear, obvious and unequivocal error in the adjudication decision and generally if a stay was allowed for part of the sum adjudicated and awarded then correspondingly the enforcement of the adjudicated decision would be for the part not stayed. However these were not borne out by the factual matrix of these two adjudication decisions (see para 54). B C

[Bahasa Malaysia summary

Plaintif telah memohon melalui saman pemula untuk penguatkuasaan dua keputusan adjudikasi bertarikh 15 Jun 2017 dan 4 Ogos 2017 seolah-olah ianya penghakiman atau perintah Mahkamah Tinggi. Plaintif adalah pihak yang menuntut dalam dua adjudikasi di bawah Akta Pembayaran dan Adjudikasi Industri Pembinaan 2012 ('Akta tersebut'). Plaintif dan defendan telah menandatangani satu kontrak pembinaan pada 15 Disember 2009 di mana plaintif dilantik oleh defendan sebagai subkontraktor untuk projek yang dikenali sebagai 'Construction, Completion, Testing And Commissioning 3 of Building Works for (i) 4 Block of 60 Units Double Storey Shop; (ii) 1 Block 8 Units of Double Storey Shop; (iii) 3 Block 37 Units of 2 1/2, Storey Shop On Lot 234 & 237, Mukim Mentakab, Daerah Temerloh, Pahang Darul Makmur' ('kontrak'). Jumlah kontrak asal adalah RM17,828,968 dan defendan telah gagal untuk membuat bayaran tertunggak kepada plaintif. oleh kerana tiada syarat pembayaran yang tetap dalam kontrak, plaintif bergantung pada s 36 Akta tersebut sebagai syarat pembayaran ingkar. Plaintif memulakan prosiding adjudikasi di bawah Akta tersebut dan defendan telah gagal untuk membuat bayaran seperti yang diarahkan di bawah kedua-dua keputusan adjudikasi mengikut tarikh yang sepatutnya. D E F G

Diputuskan, membenarkan penguatkuasaan kedua-dua keputusan adjudikasi dengan kos RM1,000:

(1) Pertikaian dan hal-hal yang diputuskan oleh kedua-dua adjudikator jatuh dalam bidang kuasa utama adjudikator seperti yang diperuntukkan di bawah akta tersebut. Tempoh masa di bawah s 12(2) Akta tersebut juga telah dipatuhi (lihat perenggan 48 & 51). H

(2) Keputusan adjudikasi kedua-dua adjudikator adalah secara bertulis dan kedua-duanya mengandungi alasan-alasan untuk keputusan yang dibuat seperti yang dikehendaki di bawah s 12(4) Akta tersebut. Seksyen 12(5) akta tersebut juga telah dipatuhi apabila jumlah yang diputuskan telah dengan jelas dinyatakan dan masa dan cara jumlah yang diputuskan harus dibayar (lihat perenggan 52–53). I

(3) Ini bukanlah kes di mana mahkamah perlu menguatkuasakan kurang daripada jumlah yang diputuskan dalam keputusan adjudikasi di bawah s 28(2) Akta tersebut. Pertimbangan tersebut hanya dilakukan apabila terdapat kesilapan yang jelas, ketara dan nyata dalam keputusan adjudikasi dan secara amnya jika penggantungan dibenarkan untuk sebahagian jumlah yang diputuskan dan dianugerahkan maka penguatkuasaan keputusan adjudikasi adalah untuk pihak yang tidak digantungkan. Walau bagaimanapun perkara-perkara ini tidak sesuai dengan fakta matrik kedua-dua keputusan adjudikasi (lihat perenggan 54).]

Notes

For cases on construction contracts in general, see 1(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 4227–4232.

Cases referred to

Carillion Construction Limited v Devonport Royal Dockyard Limited [2005] EWCA Civ 1358, CA (refd)

View Esteem Sdn Bhd v Bina Puri Holdings Bhd [2018] 2 MLJ 22, FC (refd)

Legislation referred to

Construction Industry Payment and (Exemption) Order 2014 First Schedule

Construction Industry Payment and Adjudication Act 2012 ss 2, 3, 4, 5, 6, 12(2), (3), (4), (5), 13, 24, 28(1), (2), 36, 40

Siti Azlina (Chamber of Nur Hamizah Hamzah) for the plaintiff.
Without the presence of the defendant's representative/solicitor (Irfan & Partners).

Lee Swee Seng J:

[1] The plaintiff had applied by way of an originating summons for enforcement of two adjudication decisions dated 15 July 2017 and 4 August 2017 as if they are judgments or orders of the High Court. The originating summons dated 2 October 2017 is supported by an affidavit in support affirmed by one Tan Eng Han on 26 September 2017.

[2] The plaintiff was the claimant in the two adjudications under the Construction Industry Payment and Adjudication Act 2012 ('the CIPAA').

[3] The originating summons and affidavit in support had been duly served on the defendant who was the respondent in the adjudication. An affidavit of service had been duly filed. The originating summons and the affidavit in support were served on the defendant at their registered address at 23–24, 1st and 2nd floor, Jalan Seri Kuantan 80, Kuantan Star City, 25200 Kuantan,

Pahang by way of courier service on 6 October 2017 and by AR registered post on 17 October 2017, the latter duly acknowledged with the rubber stamp of the defendant and the signature of one Mohd Nazari (KP: 770129–03–5679) exhibited as 'JA-2' in the affidavit of service. The defendant was not present for case management on 13 October 2017 and was also absent on 20 November 2017 when the court heard the application.

[4] Nevertheless the court would consider if the requirements of the CIPAA have been satisfied for the purpose of enforcement of the two adjudication decisions under s 28(1) of the CIPAA.

PARTIES AND PROJECT

[5] The plaintiff is a private limited company incorporated under the laws of Malaysia having its business address at No 15, Jalan CU 4, Taman Cheng Utama, Melaka.

[6] The defendant is a private limited company incorporated under the laws of Malaysia having its business address at No 88, Jalan IM 14/1, Kawasan Perindustrian Indera Mahkota 25200 Kuantan, Pahang.

[7] Parties entered into a construction contract on 15 December 2009 whereby the plaintiff was engaged by the defendant as its subcontractor for the project known as 'Construction, Completion, Testing And Commissioning of Building Works For (i) 4 Block of 60 Units Double Storey Shop; (ii) 1 Block 8 Units of Double Storey Shop; (iii) 3 Block 37 Units of 2 1/2, Storey Shop On Lot 234 & 237, Mukim Mentakab, Daerah Temerloh, Pahang Darul Makmur' ('the contract'). The original contract sum was RM17,828,968.

[8] As there was no proper payment term in the contract, the plaintiff relied on s 36 of the CIPAA as the default payment term.

[9] The plaintiff initiated adjudication proceedings under the CIPAA.

PROCEEDINGS IN ADJUDICATION

[10] The facts as narrated by the learned counsel for the plaintiff in her written submissions are reproduced below.

The first adjudication decision dated 15 June 2017

[11] Based on the contract, the defendant had failed to make the outstanding sum in the amount of RM1,238,814.40 to the plaintiff. The plaintiff initiated adjudication proceedings under the CIPAA.

[12] On 30 March 2017, the plaintiff had issued a payment claim made under the CIPAA to demand the outstanding amount owed by the defendant. The payment claim was made in accordance to s 5 where:

(a) the payment claim was made in writing;

(b) the amount claimed and due date for payment for payment of the amount claimed;

(c) details to identify the cause of action including the provision in the construction contract to which the payment relates;

(d) description of the work or services to which the payment relates; and

(e) a statement that is made under this act.

[13] The defendant failed to issue their payment response pursuant to s 6 of the CIPAA.

[14] Thereafter, the plaintiff had initiated the adjudication proceedings by serving the notice of adjudication dated 14 April 2017 to the defendant.

[15] An adjudicator, Ms Kelly Ong Siew Mun, was appointed by the KLRCA on 16 May 2017 and the adjudicator submitted the notice of acceptance of the appointment on 17 May 2017 with the directions to the parties.

[16] The plaintiff submitted adjudication claim on 22 May 2017. The plaintiff's claims in the adjudication claim are as follow:

(a) payment in the sum of or any such amount deem fit and reasonable by the learned adjudicator and RM1,238,814.40 and

(b) interest on the adjudicated sum based on 5%pa simple interest between the due date for payment and the date on which payment is finally made; and

(c) cost for the preparation (claim consultant's fee) of this claim RM45,000;

(d) all other incidental costs in the amount of RM5,000;

(e) adjudicator's fee, KLRCA fees/charges and other costs arising from and/or in connection with the adjudication proceedings; and

(f) such further and other reliefs that the adjudicator may deem fit.

[17] The defendant submitted its adjudication response to the plaintiff on 25 May 2017.

[18] The plaintiff submitted the adjudication reply on 5 June 2017.

[19] On 15 June 2017, the adjudicator delivered the adjudication decision which is in favor of the plaintiff.

[20] Pursuant to the adjudication decision, the adjudicator made the following decision at p 16 of the said decision (quoted in verbatim):

> Kelly Ong Siew Mun, having considered the payment claim, the payment response, the adjudication claim, the adjudication response and the adjudication reply, hereby determine:
>
> (a) That the respondent shall pay the claimant the sum of RM634,472.16 and this is hereby recorded as the adjudicated amount;
>
> (b) That the respondent shall pay the claimant the late payment interest at the rate of 5%pa counting from the respective progress payment due date until the payment is made;
>
> (c) That the respondent shall bear the costs of these proceedings amounting to RM37,410.75 subject to clarification to above para 56–57;
>
> (d) All the above payments shall be made within 10 working days after receiving this adjudication decision; and
>
> (e) The payments shall be made by cheque, a banker's cheque, cash or online transfer of funds into the claimant's bank account.

[21] The total amount awarded to the plaintiff based on the adjudication decision is RM799,436.19 as of 18 September 2017.

[22] Notwithstanding the adjudication decision, the defendant failed and/or refused and/or neglected to pay the plaintiff the adjudication amount together with the costs of the adjudication and the legal costs and expenses incurred by the plaintiff in the adjudication proceedings within ten days as ordered by the adjudicator, despite demands from the plaintiff to the defendant to do so by way of a solicitor's letter dated 11 September 2017.

The second adjudication decision dated 4 August 2017

[23] Based on the contract, the defendant had failed to make the outstanding sum in the amount of RM3,858,618.68 to the plaintiff.

[24] On 30 March 2017, the plaintiff had issued a payment claim made under the CIPAA to demand the outstanding amount owed by the defendant. The payment claim was made in accordance to s 5 of the CIPAA.

[25] Thereafter, the plaintiff had initiated the adjudication proceedings by serving the notice of adjudication dated 14 April 2017 to the plaintiff.

[26] An adjudicator, Mr Ernest Jai Kumar Azad was appointed by the KLRCA on 12 May 2017 and the adjudicator submitted the notice of acceptance of the appointment on 16 May 2017 with the directions to the parties.

[27] The plaintiff submitted adjudication claim on 22 May 2017. The plaintiff's claim in the adjudication claim was as follows:

(a) payment in the sum of RM3,858,618.68 or any such amount deem fit and reasonable by the adjudicator and;

(b) interest on the adjudicated sum based on 5% simple interest per annum between the due date for payment and the date on which payment is finally made;

(c) cost for the preparation (claim consultant's fee) of this claim RM60,000;

(d) all other incidental costs in the amount of RM5,000; and

(e) adjudicator's fee, KLRCA fees/charges and other costs arising from and/or in connection with the adjudication proceedings; and

(f) such further and other reliefs that the adjudicator may deem fit.

[28] The defendant failed to submit the adjudication response within the time prescribed in the CIPAA 2012.

[29] On 4 August 2017, the adjudicator delivered the adjudication decision which was in favor of the plaintiff.

[30] Pursuant to the adjudication decision, the adjudicator made the following decision at pp 18–19 of the said decision (quoted in verbatim):

> I direct the respondent, Sistem Duta Sdn. Bhd., to pay the Claimant, Tan Eng Han Construction Sdn. Bhd. as follows:
>
> (a) Pay the sum of RM3,858,718.68 within twenty-one (21) days from the date hereof;
>
> (b) Pay the sum of RM51,023.43 as costs of Adjudication within twenty-one (21) days of the date hereof;
>
> (c) Pay simple interest at the rate of 5% per annum on the sum of RM3,858,618.68 from the date of this decision till full realization of payment;

(d) Pay the sum of RM30,000.00 as costs of the proceedings with twenty-one (21) days from the date hereof.

[31] The total amount awarded to the plaintiff based on the adjudication decision is RM3,963,410.21 as at 18 September 2017.

[32] Notwithstanding the adjudication decision, the defendant failed to make the payments in the adjudication decision despite demands from the plaintiff to the defendant to do so and in particular, by way of a solicitor's letter dated 11 September 2017.

PRINCIPLES

[33] The plaintiff submitted that both the adjudicators in the first and second adjudication decisions had rendered their decisions in accordance with the requirements of the CIPAA with clear and precise justification provided to the parties in support of the adjudication decisions with the necessary form and substance.

[34] The plaintiff submitted that both the adjudication decisions are valid and binding and should be given effect and enforcement allowed as the defendant had failed to make payments as directed under the two adjudication decisions by their due dates.

[35] The binding nature and effect of an adjudication decision is provided for in s 13 of the CIPAA as follows:

13 Effect of Adjudication Decision

The adjudication decision is binding unless —

(a) It is set aside by the High Court on any of the grounds referred to in s 15;

(b) The subject matter of the decision is settled by a written agreement between the parties; or

(c) The dispute is finally decided by arbitration or the court.

[36] Flowing from and following the binding effect of an adjudication decision and the refusal of the defendant as respondent in the adjudications to make payments as directed in the adjudication decisions, the plaintiff had availed themselves of the provision of s 28(1) of the CIPAA to enforce the adjudication decisions as if they are the judgments or orders of the High Court. s 28 of the CIPAA reads as follows:

28 Enforcement of adjudication decision as judgment

(1) A party may enforce an adjudication decision by applying to the High Court for an order to enforce the adjudication decision as if it is a judgment or order of the High Court.

(2) The High Court may make an order in respect of the adjudication decision either wholly or partly and may make an order in respect of interest on the adjudicated amount payable.

(3) The order made under subsection (2) may be executed in accordance with the rules on execution of the orders or judgment of the High Court.

[37] The concept of interim finality is what characterises an adjudication decision in the scheme of statutory adjudication as practiced in many Commonwealth jurisdictions. In the UK where statutory adjudication was first introduced, it was observed as follows in *Carillion Construction Limited v Devonport Royal Dockyard Limited* [2005] EWCA Civ 1358, by the English Court of Appeal:

> 85. *The objective which underlies the Act and the statutory scheme requires the Courts to respect and enforce the adjudicator's decision* unless it is plain that the question which he has decided was not the question referred to him or the manner in which he has gone about his task is obviously unfair. *It should only be in rare circumstances that the courts will interfere with the decision of an adjudicator.* The courts should give no encouragement to the approach adopted by DML in the present case; which (contrary to the DML's outline submissions, to which we have referred in paragraph 66 of this judgment) may, indeed aptly be described as simply scrabbling around to find some argument, however tenuous, to resist payment.
>
> 86. It is only too easy in a complex case for a party who is dissatisfied with the decision of an adjudicator to comb through the adjudicator's reasons and identify points upon which to present a challenge under the labels of 'excess of jurisdiction' or 'breach of natural justice'. It must be kept in mind that the majority of the adjudicators are not chosen for their expertise as lawyers. Their skills are as likely (if not more likely) to lie in other disciplines. The task of the adjudicator is not to act as arbitrator or judge. The time constraints within which he is expected to operate are proof of that. The task of the adjudicator is to find an interim solution which meets the needs of the case. Parliament may be taken to have recognized that, in the absence of an interim solution, the contractor (or sub-contractor) or his subcontractors will be driven into insolvency through a wrongful withholding of payments properly due. *The statutory scheme provides a means of meeting legitimate cash-flow requirements of contractors and their subcontractors. The need to have the 'right' answer has been subordinated to the need to have an answer quickly. The scheme was not enacted in order to provide definitive answers to complex questions*. Indeed, it may be open to doubt whether Parliament contemplated that disputes involving difficult questions of law would be referred to adjudication under the statutory scheme. We have every sympathy for an adjudicator faced with the need to reach a decision in a case like the present.

87. In short, in the overwhelming majority of cases, the proper course for the party who is unsuccessful in an adjudication under the scheme must be to pay the amount that he has been ordered to pay by the adjudicator. *If he does not accept the adjudicator's decision as correct (whether on the facts or in law), he can take legal or arbitration proceedings in order to establish the true position. To seek to challenge the adjudicator's decision on the ground that he has exceeded his jurisdiction or breached the rules of natural justice (save in the plainest cases) is likely to lead to a substantial waste of time and expense as, we suspect, the costs incurred in the present case will demonstrate only too clearly*. (Emphasis added).

[38] In a case where there is no application to set aside an adjudication decision, the court upon being asked to enforce the adjudication decision would ordinarily grant an order in terms of the application to enforce unless there is patent non-compliance with the requirements of the CIPAA such as the following:

(a) that the dispute is not one within the core or original jurisdiction of the adjudicator;

(b) that the decision is a void decision under s 12(3) of the CIPAA being made outside the period specified in s 12(2);

(c) that the decision is not in writing and does not contain reasons for such decision under s 12(4) of the CIPAA; and

(d) that the decision has not determined the adjudicated amount and the time and manner the adjudicated amount is payable.

[39] If a dispute referred to adjudication is clearly one in which the adjudicator would have no jurisdiction under the CIPAA, then the High Court in hearing the enforcement application would dismiss the application.

[40] The Federal Court in *View Esteem Sdn Bhd v Bina Puri Holdings Bhd* [2018] 2 MLJ 22 alluded to the different sense in which the word 'jurisdiction' may be used in the context of the CIPAA as follows:

[16] The term 'jurisdiction' under CIPAA is not used in the administrative or public law sense but in relation to matters within the scope of CIPAA. On this point, in *Terminal Perintis Sdn Bhd v Tan Ngee Hong Construction Sdn Bhd & Anor* [2017] MLJU 242, Lee Swee Seng J observed as follows (at [70]):

> In the application of our CIPAA, we are free from the shackles of the language of administrative law and judicial review. The word 'jurisdiction' is used in s 15(d) as in the Adjudicator having acted in 'excess of his jurisdiction' as a ground for setting aside an adjudication Decision. It is also used in s 27(1) with respect to an Adjudicator's jurisdiction being limited to the matters raised in the Payment Claim and the Payment Response. Then there is a reference to it in s 27(2) with respect to extending his jurisdiction by way of agreement in writing to deal with matters not specifically raised in the Payment Claim and Payment Response.

> Finally there is the reference to a 'jurisdictional' challenge, which when raised, does not prevent the Adjudicator from proceeding and completing the Adjudication without prejudice to the rights of any party to set it aside under s 15 or to oppose its enforcement under s 28 ... Issues as to whether there is a valid cause of action, does not go towards jurisdiction but rather to the merits of the claim ...
>
> [17] The learned judge also made note of the various types of jurisdictional complaints within the CIPAA which may be categorized as *core jurisdiction, competence jurisdiction and contingent jurisdiction*. The common feature in all of them is the presupposition that CIPAA applies to determine if the adjudicator had kept within his jurisdiction. (Emphasis added.)

[41] Even though this application is not being opposed this court would still be concerned that the matter decided upon by the adjudicator must be one ostensibly falling within the core or original jurisdiction of the CIPAA.

[42] The reason is obvious enough: if the adjudicator has no jurisdiction over the dispute then the decision given is null and void and unenforceable.

[43] The court's chief concern when presented with an enforcement application would be to ask if the matter adjudicated upon is one falling within the core or original jurisdiction of the CIPAA. It is within the core jurisdiction of the CIPAA if it is a matter falling with the application provision under s 2 and that it does not fall within the non-application provision under s 3 and further that it is not falling within the exemption provision under s 40 of the CIPAA and the exemption order made thereunder.

[44] Here the 'Construction Contract' is in writing and is wholly carried out in Malaysia as required under s 2 of the CIPAA and it is with respect to 'construction work' as defined in s 4 of the CIPAA being in this case the 'Construction, Completion, Testing And Commissioning of Building Works' of some shop lots in Pahang. Under s 4 of the CIPAA 'construction work' means the construction of (a) any building.

[45] Moreover the construction work does not come within the exempted or non-application provision of s 3 of the CIPAA in that it is not a construction contract entered into by a natural person for any construction work in respect of any building which is less than four storey's high and which is wholly intended for his occupation.

[46] Neither does it come within the exemption envisaged in s 40 of the CIPAA where the minister may, upon considering the recommendation of the KLRCA, by order published in the *gazette*, exempt:

(a) any person or class of persons; or

(b) any contract, matter or transaction or any class thereof, from all or any of the provisions of this act, subject to such terms and conditions as may be prescribed.

[47] Under the Construction Industry Payment and (Exemption) Order 2014 a government construction contract as specified in the First Schedule is exempt from the application of the CIPAA:

FIRST SCHEDULE

A contract for any construction works —

(a) that is carried out urgently and without delay due to natural disaster, flood, landslide, ground subsidence, fire and other emergency and unforeseen circumstances;

(b) that relates to national security or security related facilities which includes the construction of military and police facilities, military bases and camps, prison and detention camps, power plant and water treatment plant.

[48] I am more than satisfied that the disputes and matters decided by the two adjudicators fall within the core jurisdiction of the adjudicators as provided for under the CIPAA.

[49] Generally for matters involving the competence jurisdiction of the adjudicator, it would be for the party challenging the decision to raise it for the adjudicator would have complied with s 24 of the CIPAA by making a declaration as to the matters provided therein as follows that:

(a) there is no conflict of interest in respect of his appointment;

(b) he shall act independently, impartially and in a timely manner and avoid incurring unnecessary expense;

(c) he shall comply with the principles of natural justice; and

(d) there are no circumstances likely to give rise to justifiable doubts as to the adjudicator's impartiality and independence.

[50] Likewise, where contingent jurisdiction is concerned as in the adjudicator would have jurisdiction if for example the procedure in the CIPAA is first complied with as in the service of the payment claim on the non-paying party, these are matters which would normally be raised at the instance of the party challenging the adjudication decision.

[51] With respect to the time frame for making decision, I am more than satisfied that the time period under s 12(2) of the CIPAA has been complied

with as follows:

(2) Subject to subsection 19(5), the adjudicator shall decide the dispute and deliver the adjudication decision within —

(a) Forty-five working days from the service of the adjudication response or reply to the adjudication response, whichever is later;

(b) Forty-five working days from the expiry of the period prescribed for the service of the adjudication response if no adjudication response is received; or

(c) Such further time as agreed to by the parties.

[52] I am further satisfied that the adjudication decisions of both the adjudicators are in writing and that they both contain reasons for the decisions arrived at as required under s 12(4) of the CIPAA.

[53] Section 12(5) of the CIPAA has also been complied with as the adjudicated amount had been clearly stated and the time and manner the adjudicated amount is payable.

[54] This is not a case where the court should enforce less than the amount adjudicated in the two adjudication decisions under s 28(2) of the CIPAA. That discretion is exercised only when there is clear, obvious and unequivocal error in the adjudication decision and generally if a stay is allowed for part of the sum adjudicated and awarded then correspondingly the enforcement of the adjudicated decision would be for the part not stayed. Likewise if there have been payments made after the adjudication decision was made. However these are not borne out by the factual matrix of these two adjudication decisions.

PRONOUNCEMENT

[55] Therefore in the absence of a challenge or objection to the application for enforcement of the two adjudication decisions and having satisfied myself that the adjudicators ostensibly have jurisdiction to determine the disputes that had arisen, I had allowed the enforcement of the two adjudication decisions with costs of RM1,000.

Enforcement of two adjudication decisions allowed with costs of RM1,000.

Reported by Ahmad Ismail Illman Mohd Razali